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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/632,559	07/31/2003	Mark A. Etter	JK01477B	2588
28268	7590	09/13/2006	EXAMINER	
THE BLACK & DECKER CORPORATION 701 EAST JOPPA ROAD, TW199 TOWSON, MD 21286			RAO, SHEELA S	
			ART UNIT	PAPER NUMBER
			2125	

DATE MAILED: 09/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/632,559

Applicant(s)

ETTER ET AL.

Examiner

Sheela Rao

Art Unit

2125

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 1-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 4/19/04 & 8/1/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

1. Applicant's response to the Restriction Requirement has been entered and considered.
2. Claims 1-18 are pending and presented for examination. Claims 15-18 have been elected while claims 1-14 are withdrawn from consideration.
3. Applicant is reminded that claims 1-14 should be cancelled.
4. Applicant's submission of references on form PTO-1449, filed 4/19/04 and 8/1/05, have been considered. A signed copy of each form is attached. Among the foreign references, only those with English translations have been considered. The non-patent literature cited on pages 13 and 14 of the IDS, all have not been considered as these documents were not found in the file.

***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided

the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claim 15 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over amended claim 7 of copending Application No. 10/463/206. Although the conflicting claims are not identical, they are not patentably distinct from each other because both claims contain features of a non-contact measurement and alignment device operative with a power tool as well as a graphical user interface for user operation of the power tool. The limitations of each of these claims are not distinct from one another.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 15-18 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent Publication 2001/0028025 A1 issued to Pease.

Pease teaches of a device for quickly and accurately obtaining dimensional measurement data. In doing so, the limitations of the instant invention are disclosed. As with the limitations of claims 15-18, the device of Pease is an integrated measurement device that is operative with a power tool and compiles measurement data. The measurement device includes an image processor that receives image data and

converts the image data to measurement data for the object, as in the indicator and visual marker provided in the device of the instant invention. See paragraphs [002] - [005]. Furthermore, the reference of prior art discloses the device to have an image processor allowing its display to be graphic and converts various user inputs via a touch-screen into multiple commands for the device. These various user inputs and touch-screen display represent the folders presented by the device to the user. It is further disclosed that a graphical user interface and integrated controller capable of receiving user inputs of a desired setting, such that upon processing the device sends confirmation that the measurement is processed by visually indicating such on the graphical display. See page 2, paragraphs [0023-0027]

Instant claim 16 further limits the measurement device to one having an adjustable display screen. The device as used by Pease is stated as a hand-held device. As is well known hand-held components are considered modular and flexible for use; therefore, it is inherent for the display screen to be adjustable as convenient to the user to view at various angles.

Finally, the device comprising a computing system as per claims 17 and 18, the prior art invention includes a controller and processor for controlling the device. With regard to a wireless networking assembly, Pease teaches the use of external communication through the use of a communication port. The use of an external source allows for the device to communicate with remote or second computing systems. See paragraphs [0014] and [0017] in relation to Fig. 3, as well as paragraph [0022].

For the reasons stated above, the limitations of the claimed invention is taught by the prior arts of record; thereby, rendering the instant claims unpatentable.

### **Conclusion**

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Owens                      USPN 6,263,584 B1

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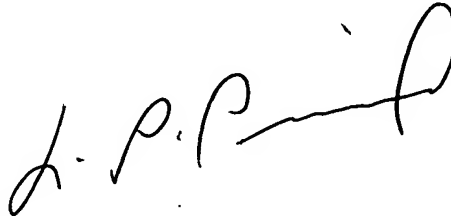
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheela Rao whose telephone number is (571) 272-3751. The examiner can normally be reached Monday - Friday from 8:30 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leo Picard, can be reached on (571) 272-3749. The fax number for the organization where this application or any proceeding papers is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. It should be noted that status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should any questions arise regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Sheela S. Rao  
September 6, 2006



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